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No. 332

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

STOCKARD STEAMSHIP CORPORATION, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

REPLY TO GOVERNMENT'S BRIEF IN OPPOSITION

J. FRANKLIN FORT
529 Tower Building
Washington 5, D. C.
Counsel for Petitioners

KOMINERS & FORT
JOHN CUNNINGHAM
ISRAEL CONVISSER
Of Counsel

October 20, 1961.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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1. The Government has filed a conditional cross-petition in No. 438, in which petitioners herein have acquiesced in their response filed concurrently herewith.

2. The Government's memorandum filed in 1959,[1] acquiescing in the cross-petitions seeking review of the limitations issue, stated that "an *en banc* decision on the limitations issue by the court below, if validly made, would

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[1] *American-Foreign Steamship Corporation* v. *United States* and *Stockard Steamship Corporation, et al.* v. *United States* (Memorandum of the United States in Nos. 322 and 334, October Term, 1959, pp. 2-3).

be almost a prerequisite to review of the issue by this Court." It also there stated that an "early resolution [of the limitations issue] appears desirable from the standpoint of the administration of justice . . ."

A valid *en banc* decision has been rendered, but now that the Government, as Justices Harlan, Frankfurter and Brennan suggested when the case was last here (363 U.S. 685, 696), has retrieved its loss, it has receded from its 1959 position that review by this Court is necessary and desirable.

3. Clause 13 admittedly was amended because of the existence of the principal dispute alleged in the libels, and Judge Smith's view (in which none of his colleagues concurred) that the clause does not apply to that dispute, is incomprehensible. And, contrary to the Government's brief in opposition (p. 13), the one-two-two opinion below does not resolve the conflict within the Second Circuit as to the crucial question of the effect of Clause 13 on the date of accrual of the cause of action.[2] The decision therefore furnishes no final guidance either to the District Court for the Southern District of New York, or to other circuits and district courts, which must deal with the twenty-seven similar cases awaiting an authoritative determination herein.

4. When the Government petitioned for review of the earlier *en banc* decision favorable to petitioners, it urged that there were present in these cases questions of importance in the administration of justice (Petition in No. 138, October Term, 1958, p. 7). The petition herein similarly

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[2] Judge Smith held that Clause 13 reserved some disputes and not others. Judges Friendly and Moore (and Judges Medina and Hincks before them) read Clause 13 as reserving all disputes until final audit. Judges Clark and Waterman believed the clause reserved all disputes, but to a date earlier than final audit.

raises a number of questions of public importance, but the Government has passed them over in complete silence.

5. The Government's opposition (pp. 14-15) states that the limitations issue is not a recurring one since the provisions of Clause 13 were changed on January 30, 1957, and therefore the issue will not arise in the future under charters made by the Maritime Administration. The Government's statement is in error. While Clause 13, after January 30, 1957, omitted the preliminary payment language, nevertheless substantially identical language was retained in the regulations applicable to current charters. (See 46 C.F.R. 299.31(k) and 299.39.)

Petitioners urge, therefore, that their petition be allowed.

Respectfully submitted,

J. Franklin Fort
529 Tower Building
Washington 5, D. C.
Counsel for Petitioners

Kominers & Fort
John Cunningham
Israel Convisser
Of Counsel

October 20, 1961.